

Case A-1995

Tree Removal Appeal

Removal of one 12.0-inch diameter Cherry tree located in the rear (south) yard of the property to accommodate a new deck.

Andrew D. Herman & Katherine R. Herman
22 West Irving Street

22 West Irving Street



Figure 1: View of West Irving Street.



Figure 2: View of the subject Cherry tree.

May 10, 2012

TO: Board of Managers
Chevy Chase Village

FROM: Chair of the Tree Ordinance Board

RE: Consent Agreement for 22 West Irving Street

The proposed consent agreement for 22 West Irving Street is attached. It has been signed by the owners of the property and the Chair of the Tree Ordinance Board. If two Board Members do not object, it will become effective by Board consent at the end of the May 14 Board Meeting and the Village Manager will be authorized to sign on behalf of the Board and issue a permit to remove the tree that is the subject of the agreement.

In summary, the owners requested a permit to remove a flowering cherry tree approximately five feet behind their new breakfast room addition in order to build a deck off their addition in the rear of the house. The Tree Ordinance Board (TOB) has met with the owners and visited the property. As explained in the consent agreement, the TOB unanimously concluded that the construction of the deck was a legitimate reason for removal of the tree and that the tree was not by reason of its age, size or outstanding qualities of such a nature as to require its preservation. The owners have agreed that, if allowed to remove the tree, they will reforest by planting a Littleleaf Linden tree in the southeast corner of their rear yard. The four neighbors abutting the rear yard of the property were affirmatively contacted and none objected to the removal or reforestation. The Tree Committee was notified and no members objected. The TOB and Village arborist support the

agreement. The agreement has been reviewed by Village
Counsel.

22 West Irving Street

CONSENT AGREEMENT

RECITALS

CHEVY CHASE VILLAGE, hereinafter referred to as the "Village", is a Maryland municipal corporation which is authorized to and does regulate the removal, destruction and impairment of certain trees on private property as set forth in Chapter 17, entitled Urban Forest, of the Chevy Chase Village Code.

ANDREW D. HERMAN and KATHARINE R. HERMAN, hereinafter referred to as "OWNERS", are residents of the Village and sole owners of property in the Village, located at 22 West Irving Street, consisting of parts of lots 15 and 16 in block 29, in the subdivision known as SECTION TWO, CHEVY CHASE, as per plat thereof recorded in Plat Book 2 at Plat Number 106, among the Land Records of Montgomery County, Maryland.

The Owners requested a permit from the Village Manager under Section 17-3 of the Village Code to remove a flowering cherry tree (the trunk of which measures more than 24 inches in circumference at 4 ½ feet above ground and therefore requires a permit for removal) located approximately five feet behind their new breakfast room addition. The Owners seek to remove the tree in order to build a deck off their new addition in the rear of their house. The Village Manager denied the permit for failure to meet any of the conditions set forth in Section 17-3.

Under Section 17-4 of the Village Code, the Owners have appealed the denial of the permit. Under Section 17-5 of the Village Code, the Board of Managers of Chevy Chase Village has delegated the initial administration of appeals under Section 17-4 to a three-member Tree Ordinance Board ("TOB").

The TOB has met with the Owners and visited the property at 22 West Irving Street. The TOB, after consulting with the Village arborist,

unanimously concluded that the construction of the proposed deck was a legitimate reason for removing the flowering cherry tree, that it was necessary to remove the tree to construct the deck, and that the tree proposed to be removed was not by reason of its age, size or outstanding qualities, including uniqueness, rarity or species specimen, of such nature as to require its preservation. The owners have agreed that, if allowed to remove the tree, they will reforest by planting a Littleleaf Linden in their rear yard approximately 15 to 30 feet from the southeast corner of their property.

On April 23, 2012, the Chair of the TOB spoke with the residents at 20 and 24 West Irving Street and the residents at 15 and 17 Hesketh, the four properties abutting the rear yard of 22 West Irving Street. None of the residents objected to the removal of the flowering cherry tree or the reforestation with a Littleleaf Linden tree. On April 20, the members of the Village Tree Committee were given email notice of the proposed removal and reforestation and asked to submit comments or objections by 5 p.m. on April 25, 2012. No comments or objections were received by the TOB.

Based on the foregoing, the TOB recommends that the Owners request to remove the flowering cherry tree be granted conditioned on (1) the Owners having, prior to removal of the tree, first obtained a permit from the Village authorizing construction of the deck and submitting to the Village Manager a construction contract for the deck and (2) agreeing to reforest with a Littleleaf Linden tree in the location described above within six months from the effective date of this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings and obligations herein contained, One Dollar (\$1.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and the Owners hereby agree and covenant as follows:

1. The Owners, if they have not already done so, will obtain a permit to construct the proposed deck on the rear of their house and submit to the Village Manager a construction contract for such deck.

2. The Village, after the issuance of the aforesaid permit and receipt of the aforesaid construction contract for the deck, will grant a permit to the Owners for the purpose of removing the flowering cherry tree described above located approximately five feet behind their new rear addition to permit construction of such deck promptly after the effective date of this Agreement (as defined in paragraph 12 below).

3. The Owners agree to reforest within six months from the effective date of this Consent Agreement by planting a Littleleaf Linden (*Tilia*) tree (or variety thereof) of at least 2 ½ inches in caliper approximately 15 to 30 feet from the southeast corner of their rear yard and to replace such tree if it becomes diseased or dies within two years of the effective date of this Agreement. The Owners further agree to notify the Village Manager when the tree has been planted.

4. The Owners agree to maintain the reforestation tree at the Owners' sole expense and the Owners shall not remove, destroy, or impair the health of the reforestation tree in any way without the express prior written consent of the Village.

5. Any changes or modifications to the reforestation plan shall require the further written consent of the Village, which may be withheld in the Village's sole discretion.

6. The Owners acknowledge that compliance with this Consent Agreement is necessary for the protection of the public health, safety and welfare of the residents of the Village and acknowledge and agree, in the event of Owners' breach of this Agreement, that the Village would not have an adequate remedy at law, and the Village shall be entitled to specific performance of the Owners' obligations and to injunctive relief related thereto without posting a bond or proving actual damages, in addition to any other remedies which may be available. The Owners further agree that the costs incurred by the Village, including legal expenses, shall be charged to the Owners and may be assessed against the Owners' property along with property taxes. The Owners further agree not to contest any action brought by the Village to obtain specific performance and injunctive relief under this Agreement. The Owners also agree that, if they fail to complete their reforestation obligations,

the Village shall have the right to enter upon the Owners' property as it deems proper to install the reforestation tree.

7. The Owners also acknowledge that the Village and the public residing in the Village would incur substantial damages in the event of Owners breach of the requirements of this Agreement, including, but not limited to, the costs of staff time, arborist time, and other expenses incurred in enforcing this Agreement and the diminution of the Village's tree canopy. The parties recognize the difficulty in computing actual damages and, accordingly, agree to liquidated damages for the aforesaid costs, delay, and harm to the public. The parties acknowledges that liquidated damages of \$1,000.00 are a reasonable estimate, at the time of the execution of this Agreement, of the damages to the Village and the public that will likely occur as a result of the Owners' failure to perform their obligations under this Agreement. The Owners acknowledge that the liquidated damages agreed to are not a penalty and that they, along with any costs incurred by the Village, including legal expenses, may be assessed against the Property along with property taxes.

8. The Owners shall be jointly and severally liable for their obligations hereunder and expressly waive any right to a jury trial.

9. By signing this Agreement the undersigned Owners represent to the Village that they are all of the Owners of the property described above at 22 West Irving Street.

10. By signing the Agreement, the Chairman of the TOB or his delegate signifies that the TOB has approved this Consent Agreement and has recommended its adoption by the Village Board of Managers.

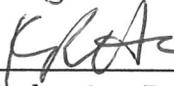
11. By signing this Agreement, the Village Manager signifies that the Village Board of Managers has approved this Consent Agreement.

12. The effective date of this Consent Agreement is the date the Village Manager signs the Agreement signifying that she has been informed by the Village Board of Managers that the Consent Agreement has been approved.



Andrew D. Herman (Owner)

May 9, 2012



Katharine R. Herman (Owner)

May 9, 2012



Michael L. Denger, on behalf
of the Tree Ordinance Board

May 9, 2012

CHEVY CHASE VILLAGE

BY: Shana R. Davis-Cook
Village Manager

_____, 2012

Chevy Chase Village

Tree Inspection Request Form

Property Address: <u>22 W. Irving St</u>
Date this form submitted to Village office: _____
Resident Name: <u>Andrew Herman</u> Phone: _____ E-mail: _____
This request initiated by: <input type="checkbox"/> Village office staff. <input type="checkbox"/> Resident/property owner
<input checked="" type="checkbox"/> Inspect tree(s) ¹ requested for removal -- are any of conditions in Village Code Sec. 17-3(a) met? <input type="checkbox"/> Inspect trees ¹ on property to determine if a Tree Protection Plan (TPP) is needed for proposed project ² . <input type="checkbox"/> Pursuant to a Village Bldg Permit application ² , prepare TPP for trees ¹ on property [\$250 fee] <input type="checkbox"/> Verify that a TPP has been implemented for Village Building Permit # _____. <input type="checkbox"/> Follow up on an existing TPP -- is it OK to remove TPP? <input type="checkbox"/> Village right-of-way/park <input type="checkbox"/> Other: _____ <small>¹ Show location of tree(s) on a plat or site plan (or on diagram on reverse, but only if plat unavailable). ² Attach full description of proposed project.</small>

Sections below must be completed by Village Arborist:

Tree #1: Private Property Village right-of-way
 Location: Rear Front Side-L Side-R
 DBH* = 12" Species: Flowering Cherry Tag#: _____ n/a: no tag.
 Assessment: Tree has been limbed up on one side, but is healthy

Tree #2: Private Property Village right-of-way
 Location: Rear Front Side-L Side-R
 DBH* = _____ Species: _____ Tag#: _____ n/a: no tag.
 Assessment: _____

Tree #3: Private Property Village right-of-way
 Location: Rear Front Side-L Side-R
 DBH* = _____ Species: _____ Tag#: _____ n/a: no tag.
 Assessment: _____

(For more trees, please check here and attach pages: # of extra trees ____; # of extra pages ____.)

Arborist assessment: Does tree meet any of the conditions in Village Code 17-3 to qualify for removal?

Removal Approved	Denied	*Is permit required? (i.e, is trunk circumf. ≥24"?)	Y	N
Tree #1 <input type="checkbox"/>	<input checked="" type="checkbox"/>		Tree #1 <input checked="" type="checkbox"/>	<input type="checkbox"/>
Tree #2 <input type="checkbox"/>	<input type="checkbox"/>		Tree #2 <input type="checkbox"/>	<input type="checkbox"/>
Tree #3 <input type="checkbox"/>	<input type="checkbox"/>		Tree #3 <input type="checkbox"/>	<input type="checkbox"/>

Arborist Signature  **Date** 3/5/12

Diagram for Tree Inspection

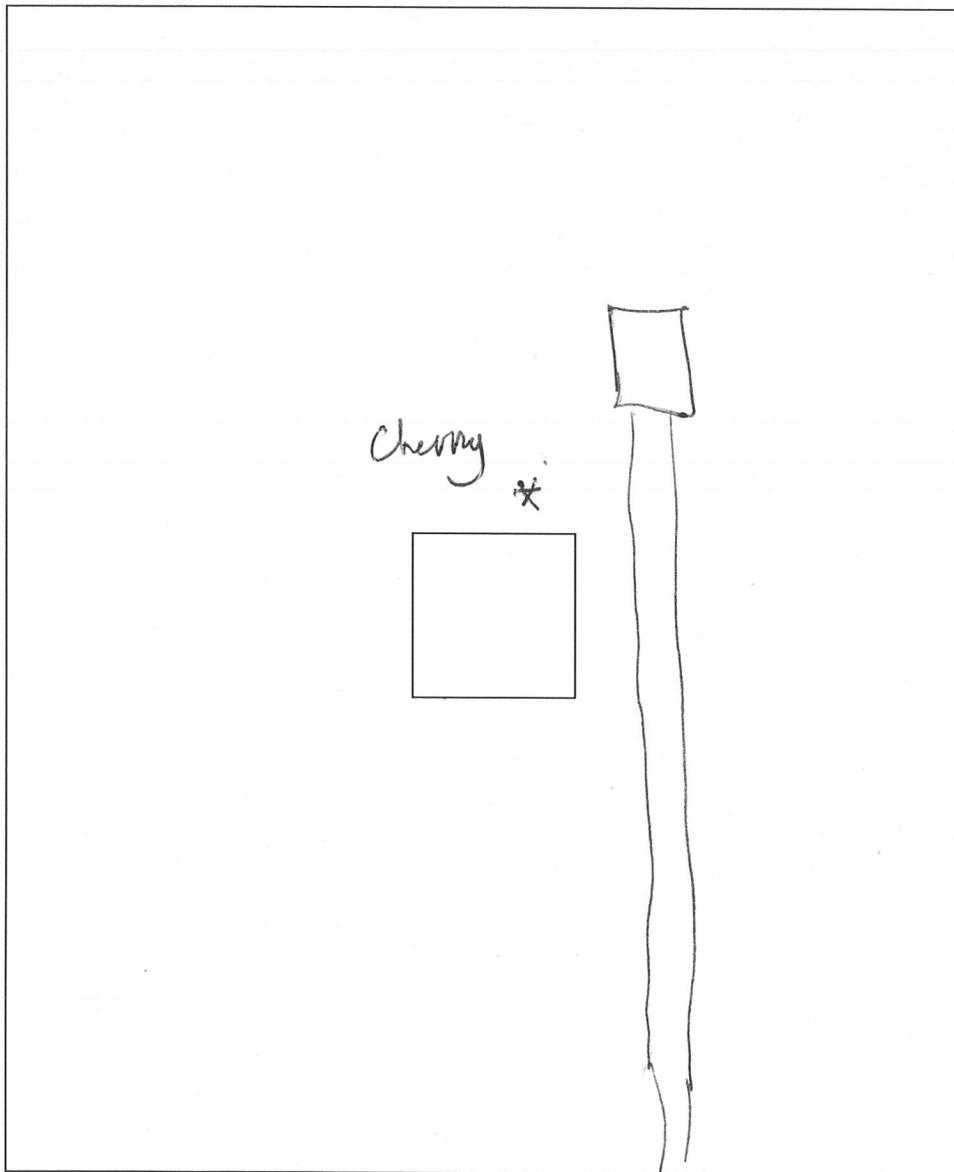
(use this diagram ONLY if a plat or site survey is unavailable)

Instructions for Arborist (or) Notes from Arborist:

Rear of house

Side-Left

Side-Right



Street

Chevy Chase Village Tree Removal Permit Application

Permit No. _____

All trees on private property with trunks that measure at least twenty-four (24) inches in circumference (or 7.7 inches in diameter) at four and one-half (4½) feet above ground level require a Village permit to be removed.

Property Address: 22 W. Irving (tree directly behind house)	
Resident: Andrew + Katie Herman	
Telephone: 202 662 9700	
E-mail: andrewdherman@gmail.com	
Tree Removal Contractor (required):	
Business Name: Custom Touch Tree Service	
Owner: Kyle Adamson	
Address: 13302 Tunking Branch Pkwy Rockville, MD 20853	
Telephone: 301-963-2384	Fax:
E-mail:	
MD Dept. of Natural Resources (DNR) License No. (required):	
For Village office staff use:	
Is this property located within the historic district?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Date application submitted to Village Office: 2/22/12	Staff initials: <u>ES</u> Date approved or denied: _____

Village Code Chapter 17. Urban Forest §17-1 and 17-2. Permit Required.
 "No person shall remove or destroy, or cause the removal or destruction, of a tree or undertake any action that will substantially impair the health or growth of a tree without first obtaining a permit from the Village Manager. No permit shall be required for normal and reasonable trimming or other tree care designed to maintain the health, shape, or balance of a tree."

- Village Code §17-3. Permit Standards.**
 The Village Manager may issue a permit *only* if at least one (1) of the following conditions applies:
- The tree is diseased beyond restoration, insect infected beyond restoration, or injured beyond restoration;
 - The tree is dead or dying, or is in danger of falling;
 - The tree constitutes a hazard to the safety of persons;
 - The tree constitutes a hazard and threatens injury to property;
 - The tree constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees;
 - The tree is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner.

An applicant who is denied a tree removal permit by the Village Manager may appeal that decision to the Board of Managers. Any appeal must be in writing and made within ten (10) days of the permit denial.

Filing Requirements

- Copy of the findings and recommendations report from the Village Arborist.
- This completed application, including the tree contractor's name, phone number and MD-DNR License No.
- Payment of \$50.00 per tree filing fee for a Village Tree Removal Permit application, up to a max. of \$350.

By signing below, I understand that no work may be performed until the Village permit is issued and posted to be visible from the street.

Applicant's Signature: _____ *[Handwritten Signature]* **Date:** 2/22/12

Tree Removal Plans (including reforestation plan, if any)	

For Use By Village Manager	Approved with the following conditions:

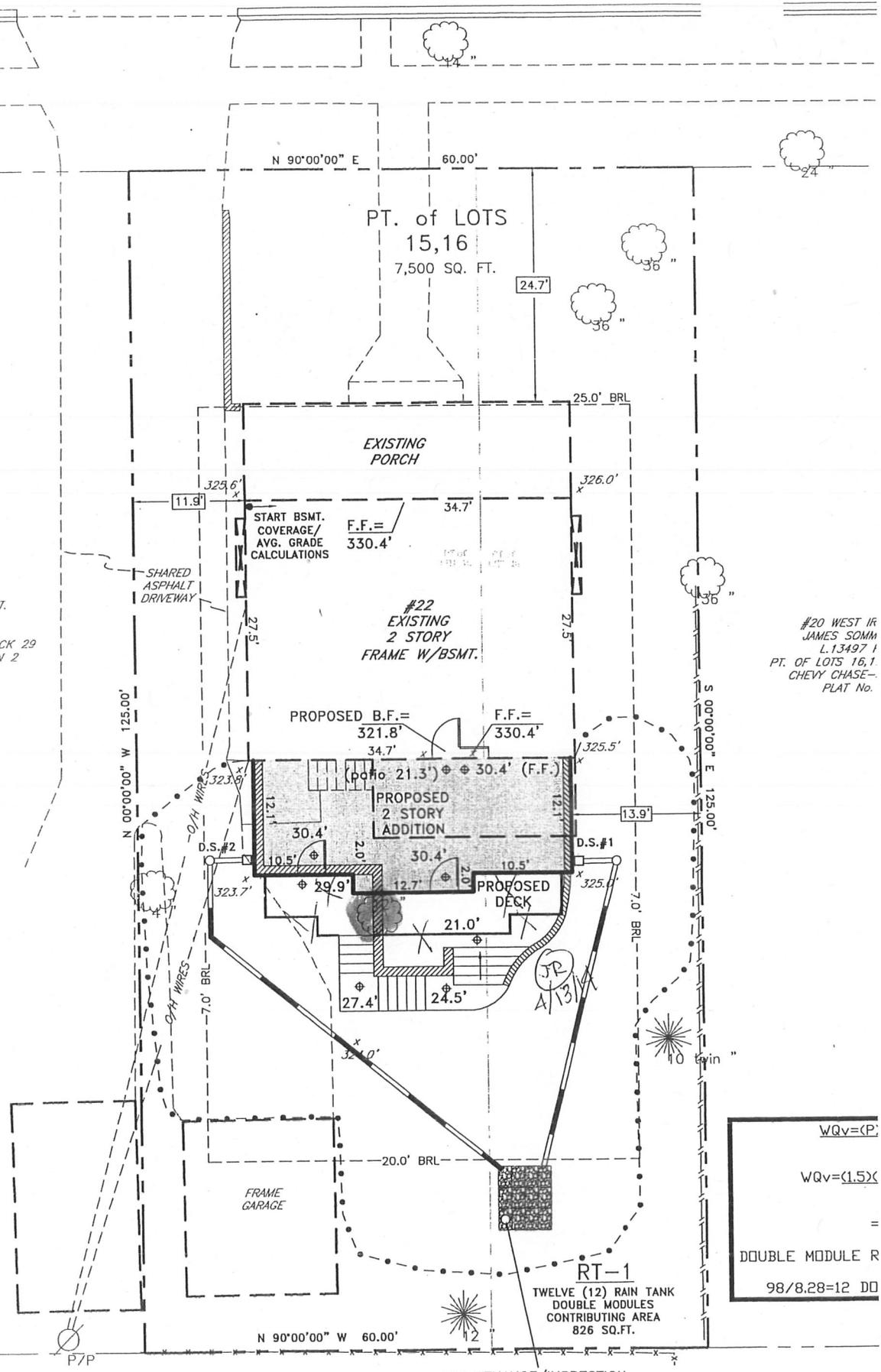
For Use By Village Manager	Denied for the following reasons:
<div style="border: 2px solid black; padding: 5px; display: inline-block;"> <b style="font-size: 2em;">D E N I E D FEB 22 2012 Chevy Chase Village Manager </div>	<i>Handwritten:</i> Branch Bank fee is too high, for Village Arborist.

Filing Fee: \$50.00/tree x _____ trees = \$ _____ (up to \$350 max. per application)	Checks Payable to: Chevy Chase Village 5906 Connecticut Avenue Chevy Chase, MD 20815
Damage Deposit <input type="checkbox"/> \$ _____ <input type="checkbox"/> Waived by Village Manager.	Village Manager Signature: Date: _____
Total Fees + Deposit:	Staff Signature: Date: _____



#24 WEST IRVING ST.
DAVID WILLIAMS
L.14112 F.305
PT. OF LOTS 14,15, BLOCK 29
CHEVY CHASE--SECTION 2
PLAT No. 106

#20 WEST IR
JAMES SOMM
L.13497 I
PT. OF LOTS 16,1
CHEVY CHASE--
PLAT No.



#15 HESKETH STREET
DANIEL WATERMAN
L.6005 F.272
PT. OF LOTS 1,2 BLOCK 29
CHEVY CHASE--SECTION 2
PLAT No. 106

MAINTENANCE/INSPECTION
PORT
(TO BE FITTED WITH
NDS POP-UP
DRAINAGE EMIITER)

WQv=<P'
WQv=<1.5X
=
DOUBLE MODULE R
98/8.28=12 DO

RT-1
TWELVE (12) RAIN TANK
DOUBLE MODULES
CONTRIBUTING AREA
826 SQ.FT.